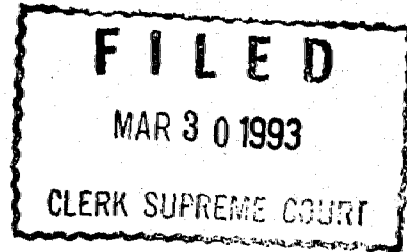


IN THE COURT OF APPEALS OF IOWA

No. 3-020 / 92-374

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LISA ROSS,
Appellant,
vs.
PAULA HULL,
Appellee.



Appeal from the Iowa District Court for Henry County,
Harlan Bainter, Judge.

The plaintiff appeals the district court's denial of
her motion for a new trial alleging the jury's damage award
in a personal injury case was inadequate. **AFFIRMED.**

Anthony Jamison of the Anthony Jamison Law Offices,
Rock Island, Illinois, for appellant.

William H. Roerman of Crawford, Sullivan, Read,
Roerman & Brady, P.C., Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

SCHLEGEL, J.

The plaintiff, Linda Ross, brought suit against the defendant to recover damages for injuries Ross allegedly sustained as a result of the defendant's allegedly negligent operation of her automobile. Following trial, the jury returned a verdict of \$10,094.95 against the defendant for past medical expenses and past pain and suffering. The plaintiff filed a motion for new trial, claiming the jury's award was inadequate. The trial court overruled the motion, and Ross now appeals. Ross contends the court abused its discretion in overruling her motion for a new trial because the jury failed to award her damages for: (1) future medical expenses; (2) past loss of earnings from the date of the accident to the present; (3) future loss of earning capacity; (4) past or future loss of full mind or body; and (5) future pain and suffering.

On November 9, 1988, Paula Hull rear-ended an automobile in which Linda Ross was a passenger. Neither car was damaged and no one reported an injury at the scene of the accident. Apparently, the road surface was slightly wet. Four days after the accident, Ross went to see a chiropractor, Dr. Evelyn Swearingen. Dr. Swearingen diagnosed whiplash and commenced treatment. Twelve days after the accident, Ross went to see her family physician, Dr. JoEllen Hoth. At the time, Dr. Hoth diagnosed a cervical strain with a muscle spasm. Other physicians also

evaluated Ross, but their findings were inconclusive. A neurologist did prescribe a pain killer for Ross.

Following the accident, Ross took a leave of absence from work on the authorization of Dr. Swearingen. Before her leave of absence, Ross earned approximately \$6,000. During the first six months of her leave of absence, Ross earned approximately \$3,000 from contract work. Thereafter, and through the date of trial, Ross worked for an abstract company for \$4.65 per hour.

On October 8, 1990, Ross filed a petition seeking damages against Hull for the injuries she allegedly sustained in the automobile accident. The matter proceeded to a jury trial, and the jury returned a verdict against Hull in the amount of \$10,094.95: \$6,094.95 for past medical expenses; and \$4,000 for past pain and suffering.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 326 A.2d 138, 140 (Vt. 1974)). An aggrieved party may be granted a new trial where the jury's award is excessive or inadequate, appearing to be imposed as a result of passion or prejudice, or where the verdict is not sustained by sufficient evidence or is contrary to law. See Iowa R. Civ. P. 244(d) and 244(f) (1992).

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In a case involving the granting or denial of a motion for new trial where it is alleged the verdict was too large or too small, precedents are of little value. Each case must be decided by relating its own unique circumstances to certain well-established principles. Moore v. Bailey, 163 N.W.2d 435, 436 (Iowa 1968).

Kaiser v. Stathas, 263 N.W.2d 522, 523 (Iowa 1978).

Although there is no real question as to the defendant's negligence being a proximate cause of the collision with the automobile in which the plaintiff was a passenger, the record does contain certain factual issues which the jury had to decide in reaching its verdict. The jury was called upon to determine whether the various items of damage complained of were proximately sustained as a result of Hull's negligence. More specifically, the jury had to determine whether Ross was still suffering from pain at the time of trial and, if so, whether such pain was caused by the accident.

Based upon the evidence in the record, the jury could have logically concluded that Ross suffered a small to moderate amount of pain following the accident, that she had legitimately sought treatment for that pain after the accident, and that her accident-related pain had ceased prior to trial. Reaching such a conclusion would lead the jury to cut off the special medical damages as of the date the jury determined Ross had recovered and would lead the jury to award some--but not all--of the special medical damages claimed by Ross. In addition, reaching such a

conclusion would lead the jury to award past pain and suffering damages, but would preclude the jury from awarding any amount for future pain and suffering or future disability.

The conclusion that Ross suffered a minor injury and recovered prior to trial is consistent with the mild nature of the accident and with the testimony of two of the three doctors who testified. Dr. Hoth testified that she anticipated Ross's recovery, and Dr. Love stated that most people with complaints like Ross's complaints recover. In addition, the jury was entitled to consider the testimony of Dr. Love, the neurologist, that Ross's subjective complaints did not correlate with the objective test results.

The testimony of these two doctors was contrary to the testimony of Dr. Swearingen, the chiropractor who believed Ross continued to suffer from the effects of the accident. However, the jury was not bound to accept Dr. Swearingen's testimony. The jury was instructed, without objection, "[y]ou may believe all, part or none of any witness's testimony." (Instruction Number 6.) The jury was also told, "[c]onsider expert testimony just like any other testimony. You may accept it or reject it." (Instruction Number 7.)

The jury apparently rejected Dr. Swearingen's testimony, at least in part. The jury was entitled to

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reject this testimony even if it had been uncontroverted. See Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978) ("the fact finder is not obligated to accept expert testimony, even if it is uncontradicted, although testimony should not be arbitrarily and capriciously rejected").

However, even if the jury believed Ross's testimony regarding on-going pain, the jury was not bound under this record nor the jury instructions to find that the pain was proximately caused by the accident. The jury was instructed without objection that, "[t]he amount you assess for any item of damages must not exceed the amount caused by the defendant as proved by the evidence." (Instruction Number 26.)

Ross stated at trial she was suffering from pain in the neck and arm. Even if the jury found this testimony to be credible, the jury was entitled to consider other causes of Ross's pain. The record reflects that at least one doctor felt the chiropractic treatments were causing some neck spasm, and Ross, herself, stated the treatments "hurt." In addition, the record contains medical findings that Ross's arm pain was caused by "cubital tunnel syndrome," a condition which may be caused by repetitive motions such as those experienced by some machine operators. Such repetitive motion injuries were a known occurrence at Ross's place of employment, and Ross had a pre-accident medical history of repetitive motion complaints. When this

evidence is weighed against the testimony concerning the mild nature of the accident, the jury was at liberty to conclude that some or all of the reported pain and suffering was caused by a stimulus other than the accident.

Ross also contends the jury should have awarded her lost wages. However, we conclude the record supports the jury's apparent finding that Ross was never disabled from work or that Ross was disabled as a result of a repetitive motion injury rather than the automobile accident.

Having carefully considered the entire record in the present case in light of all of Ross's arguments, we find no evidence indicating the jury's damage award was influenced by passion or prejudice. The dispositive question in the present case is whether the jury's verdict effectuates substantial justice between the parties in accordance with the whole record, recognizing the jury's right to accept or reject whatever portions of the conflicting evidence it deems appropriate.

We conclude the jury's verdict does result in substantial justice between the parties and, accordingly, we determine the trial court did not abuse its broad discretion in overruling the plaintiff's motion for a new trial.

AFFIRMED.